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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/628,858 | 07/28/2003 | Thomas R. Hetzel | 249.301 | 3846 |

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| EXAMINER | |
|---|---|
| KUHNS, ALLAN R | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1732 | |

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/628,858 | HETZEL ET AL. | |
| | Examiner | Art Unit | |
| | Allan Kuhns | 1732 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *27 February 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1, 2, 4-13, 16, 18-55, 57, 58 and 65-82 (as renumbered)* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-13,16,18-55,57,58 and 65-82* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1.In conjunction with rule 37 CFR 1.126, claims 35-83 are renumbered 34-82, respectively.

2.In the specification, apparently incorrect application serial numbers 249,302, 249,303 and 249,304 are referenced. Please provide an explanation or corrected numbers in response to this Office action.

3.After reconsideration, the "objected to" status of claims 34 and 40 is hereby withdrawn.

4.Claims 1, 2, 4-13, 16, 18-55, 77-80 and 82 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are indefinite because claims 1, 34, 40 and 82 require the selection of an impression foam having a crush characteristic of substantially constant crushing force over a predetermined range of collapse distances. It is submitted that the crush characteristic of the foam is not a constant crushing force but instead the reaction of the foam to the constant crushing force. In addition, claim 1 requires that the crushing force be substantially constant while creating a negative impression. It appears that this limitation may not be intended to be interpreted literally since it does not take into account (1) variations in weight of different persons who may be seated on the impression foam or (2) variations in weight distribution of a single person across portions of an impression foam. Clarification is required.

5.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.Claims 65-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cotterell (3,919,370) in view of Clynch (6,463,351). Cotterell teaches or suggests the basic claimed method for fabricating a chair (it is submitted that at least some cushioning properties are present based on the foam beads used) having a support structure for supporting a person (1) utilizing a matrix of fused-together plastic beads as the support structure, (2) shaping a human interface side into the matrix of fused together plastic beads, the human interface side defining a support contour which contacts the person (note the underside of the chair or cushion body illustrated in Figure 1 of the reference, and (3) configuring another side of the matrix of fused-together plastic beads (note the top side of Figure 1). Official Notice is taken by the examiner that it is known to contact an underside of a chair with a supporting base. Cotterell appears not to state that a custom cushion is to be made for a wheelchair, but such is taught or suggested by Clynch at column 2, lines 32-39. It would have been obvious to one of ordinary skill in the art to design a custom cushion for a wheelchair, as taught by Clynch, in order to support or protect the human anatomy.

Cotterell teach fusing a molding the plastic beads at substantially the same time, as in claim 66, and it is submitted that the beads of lower and higher density used by Cotterell inherently have different resiliency, as in claims 67 and 68.

7.Claims 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cotterell in view of Clynch as applied to claims 65-68 above, and further in view of

Brubaker et al. (5,470,590). Brubaker et al. teach or suggest the aspect of forming a negative impression of pelvic and high anatomical portions of a person followed by forming a positive mold from the negative. It would have been obvious to one of ordinary skill in the art to incorporate this aspect taught by Brubaker et al. into the method of the prior art relied upon in order to form a custom cushion.

8.Claims 69-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers, Jr. (4,347,213) as set forth in the previous Office action in view of Clynch (6,463,351). Clynch teaches the aspect of taking impressions (including an impression for custom wheelchair seats or cushions at column 4, lines 32-39) and transporting the impression to a location removed or remote from the person from whom the impression is taken at column 10, lines 58-61. It would have been obvious to one of ordinary skill in the art to incorporate such a practice into the method of Rogers, Jr. in order to prevent a person from visiting a fabrication facility.

9.The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10.Claims 1, 2, 4-13, 16, 18-55 and 77-80 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,990,744. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instantly claimed process is considered fully encompassing with regard to claims 1-19 of the patent since claims 1-19 of the patent require the evaluation of an amount of impression foam material collapse by using a clearance measuring device.

11.Applicants' arguments filed February 27, 2006 have been fully considered but they are not persuasive. Applicants' arguments are considered to be moot by the examiner based on the revised grounds of rejection introduced in this Office action.

12.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Allan R. Kuhns

ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732

4-27-06